

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.829 OF 1988

The State of Maharashtra

...Appellant.

V/s

1. Bholu @ Sharif Mohd. Mohd.
Shafi Pathan.

2. Shakil Ahmed Mustak Ahmad

3. Raju Ganga Salam @ Vindia
Salam.

All r/o Shastri Nagar, Baingan
Wadi, Greater Bombay.

...Respondents.

Mr. A.M. Shringarpure for the appellant - State.

None for the respondents.

CORAM: V.M.KANADE,J.

DATE: 13TH DECEMBER, 2004.

ORAL JUDGMENT:

1. Heard the learned APP appearing on behalf of the
the appellant - State.

2. Appellant is challenging the Judgment and Order
passed by the Court of Sessions for Greater Bombay in
Sessions Case No.308 of 1985. By the said Judgment
and Order dated 18/12/1987, the Additional Sessions
Judge, Greater Bombay was pleased to acquit the
accused of the charges levelled against them. State
has preferred an appeal against the said Judgment and
Order.

3. Prosecution case, in brief, is that the complainant is the owner of the shop and was carrying on business of dealing in scrap material. That, on 16/3/1985 between 1.00 P.M. and 1.15 P.M., the accused committed robbery in the said shop and while committing the said robbery, they were armed with deadly weapons such as country made revolver and Rampuri Knife.

4. Prosecution examined 8 witnesses. P.W. 1 - Millat Safatulla is the complainant. The complainant has stated in his cross examination that he has not given description of the accused to the police and that the accused had put burkhas on their faces at the time of robbery, yet the complainant had not mentioned this fact in the FIR that the accused had covered their faces with burkhas. In the examination-in-chief, this witness has stated that the police had asked him to identify the culprits while he was at the Police Station and the police had brought some suspects after arresting them to the Police Station in three rickshaws. Accordingly, he identified the three accused before the Court. It is thus difficult to accept the testimony of this witness because on the one hand he has stated that the accused were wearing burkhas and, on the other hand, he has

identified the accused at the Police Station. No separate identification parade was held as it is not the case of the complainant that he knew these accused. The names of the accused were given to the complainant by his servant Mohamed Akram who is examined as P.W.2. P.W.2 in his cross-examination has admitted that he came to know the names of the accused from some of his friends. This witness has also stated in the cross-examination that the accused were wearing burkhas on their faces and he was not in a position to identify their faces. He also stated that he did not give description of the accused to the police. Subsequently, this witness admitted that he had identified the accused at the instance of the police. Thereafter, this witness was cross-examined by the APP. Thus, it is not possible to accept the testimony of P.W.1 and P.W.2 since both of them have stated that the faces of the accused were covered and that they were not in a position to see them at the time of robbery. Further, they have stated that the police have arrested the accused and had brought them in rickshaw and they were identified by them in the Police Station. The rest of the evidence adduced by the prosecution is a circumstantial evidence regarding recovery of the knife and the revolver. Since the eye witness account itself is not free from doubt, it is

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not possible to convict the accused on the basis of
the recovery of the weapons.

5. The Trial Court, in my view, has correctly
appreciated the evidence on record and has acquitted
the accused. The finding of the Trial Court is
confirmed. Appeal is accordingly dismissed.

V.M. KANADE, J.